



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Jacobs Service Company; International Technology Corporation

File: B-262088.3; B-262088.4

Date: January 29, 1996

Brian J. Donovan, Esq., Jones & Donovan, for Jacobs Service Company; Dorn C. McGrath, Esq., Richard L. Moorhouse, Esq., and Mark D. Colley, Esq., Holland & Knight, for International Technology Corporation, the protesters.
Kevin P. Connelly, Esq., Bruce Lathrop, Esq., David J. Kuckelman, Esq., and Steven Kmiecik, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for Tetra Tech, Inc., an interested party.

Robert L. Ballenger, Esq., and Marcia J. Bachman, Esq., Department of the Air Force, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests of various aspects of agency's technical evaluation are denied where the record shows that the agency evaluated proposals consistently with the terms of the solicitation.
2. Protests against agency's cost evaluation are denied where record shows that agency performed an adequate cost realism evaluation, considering the potential cost impact of various offerors' proposed approaches.
3. Agency's discussions with protesters were meaningful and not misleading where agency advised firms of areas where their proposals needed clarification, revision or amplification; agency's cautionary advice to one firm regarding risk associated with submitting technical proposal revisions with best and final offer should not reasonably have misled firm into concluding that it could not make such revisions.

DECISION

Jacobs Service Company (JSC) and International Technology Corporation (IT) protest the award of a contract to Tetra Tech, Inc. under request for proposals (RFP) No. F04684-94-R-0024, issued by the Department of the Air Force for comprehensive environmental services at Vandenberg Air Force Base, California. Both protesters make numerous arguments regarding the propriety of the Air

Force's technical and cost evaluations as well as the agency's source selection decision.

We deny the protests.

BACKGROUND

The RFP contemplated the award of a cost reimbursement contract to perform comprehensive environmental services for a base year with 4 option years. Award was to be made on a best value basis. For evaluation and award purposes, the RFP stated that the Air Force would conduct an integrated assessment of technical, management and cost considerations, with technical deemed most important, management second in importance and cost third; offerors were cautioned that cost would still be a significant consideration for award purposes.

Under the technical factor, proposals were to be reviewed for understanding/proposed approach and relevant experience in four substantive areas--air, water quality, hazardous material/solid waste/hazardous waste, and natural/cultural resources. This resulted in eight equally weighted sub-elements, each of which was to be assigned a color/adjectival rating--red/unacceptable, yellow/marginal, green/acceptable, or blue/exceptional. The sub-element evaluation results were then consolidated into a single overall color/adjectival rating. Under the management factor, the ratings for understanding/proposed approach and relevant experience were combined into a single management rating. The proposals also were assigned performance risk and proposal risk ratings of high, medium or low. Cost proposals were to be evaluated for realism, reasonableness, completeness, and cost risk.

The Air Force received five initial proposals. Four of the initial proposals--those submitted by Tetra Tech, JSC, IT, and Foster Wheeler Environmental Corporation--were found to be within the competitive range. Following discussions and the evaluation of best and final offers (BAFO), the Air Force found that all four offerors were essentially equal. There were slight differences between the offers in the eight technical sub-elements, with two firms receiving blue/exceptional ratings in two sub-elements each, but the Air force concluded that these ratings did not merit the assignment of an overall technical rating of blue for these offers. The evaluation results were as follows:

RATINGS (Approach/Experience)

Technical Area	Air	Water	Hazmat	Nat/Cul Resources	MGMT
Foster	Blue/Blue	Green/ Green	Green/ Green	Green/ Green	Green/ Green
IT	Blue/Green	Green/ Green	Blue/Green	Green/ Green	Green/ Green
Tetra Tech	Green/ Green	Green/ Green	Green/ Green	Green/ Green	Green/ Green
Jacobs Services	Green/ Green	Green/ Green	Green/ Green	Green/ Green	Green/ Green

All four offerors also received low proposal and performance risk ratings in the technical and management areas.

In the cost evaluation, the Air Force made only minor realism adjustments, finding that for the most part the proposals reflected realistic costs, given each firm's technical approach. All proposals received low cost risk ratings, except IT's, which was assigned a moderate cost risk rating. The evaluated costs were as follows:

Tetra Tech:	\$20,445,710
Foster Wheeler:	\$25,079,047
JSC:	\$25,284,460
IT:	\$25,346,519

The Air Force made award to Tetra Tech, finding principally that, since all four proposals were essentially equal from a technical and management standpoint, award to Tetra Tech, based on its low evaluated cost, offered the best overall value to the government. The record also shows that the agency considered the relative ranking of the remaining offerors, finding Foster Wheeler next in line, followed by IT and JSC respectively.

The protesters protest the evaluation of their proposals and that their discussions were not meaningful, and, as discussed below, we deny these protests. The protesters also challenge the evaluation of Tetra Tech's proposal as well as Foster Wheeler's proposal. Since we find that the Air Force reasonably ranked Foster Wheeler next in line for award after Tetra Tech, we do not consider the protests concerning Tetra Tech's evaluation because the protesters are not interested parties.

EVALUATION OF THE PROTESTERS' PROPOSALS

The protesters contend that the evaluation was erroneous in several respects. For example, both firms maintain that the evaluators improperly failed to assign blue/exceptional ratings for sub-elements where their proposals were found to be especially strong.¹

Where a protester challenges the propriety of a technical evaluation, we will review the matter to ensure that the evaluation was reasonable and consistent with the RFP's stated evaluation criteria and applicable statutes and regulations. Laidlaw Env'tl. Servs., Inc., B-256346, June 14, 1994, 94-1 CPD ¶ 365.

The RFP provided that blue/exceptional ratings would be assigned where the proposal was found to exceed the specified performance or capability in a beneficial way to the Air Force. In implementing this standard, the agency evaluators assigned blue/exceptional ratings only where they found that a proposal offered at least one feature determined to be of "outstanding" merit; on the other hand, where a feature reflected only "significant" or "important" merit, they did not assign a blue/exceptional rating. There is nothing inherently improper in such a scheme, see Laidlaw Env'tl. Servs. Inc., *supra* (agency's assignment of adjectival ratings is unobjectionable where based on uniform application of descriptive standards), and the record shows that (with one exception discussed below) the evaluators adhered to this scheme in evaluating all proposals.

While both protesters contend that the ratings assigned failed to reflect the relative superiority of their proposals (as found by the evaluators), in virtually every instance, the protesters point only to examples where the evaluators identified a "significant" or "important" feature of their proposals--features which under the agency's evaluation method did not warrant blue/exceptional ratings. For example, IT contends that it should have received a blue/exceptional rating under the Water Quality sub-element because the evaluators found that its proposal "demonstrated a significant understanding of the [industrial wastewater treatment plant operations] IWTP. . ." and that "IT offered the best understanding in Water because of its understanding of the IWTP. . . ." However, while the evaluators found that the firm's proposal demonstrated "significant" understanding, they did not find that the proposal offered any "outstanding" features of benefit to the Air Force that would merit a blue/exceptional rating. IT does not take issue with the narrative conclusions of the evaluators concerning the appropriate adjective (*i.e.* outstanding versus significant) used to describe the features of its proposal, and we find no evidence that the evaluators did not properly employ the terms as described above

¹IT contends that the agency failed to assign blue/exceptional ratings to its proposal in four of the eight substantive technical evaluation sub-elements, and JSC contends that the agency improperly failed to assign blue/exceptional ratings in two of the substantive technical evaluation areas and also in the management/business area.

in evaluating all proposals. That IT's proposal may have demonstrated "the best" understanding of the Water Quality area is irrelevant; the ratings were dependent, not upon a proposal's relative quality as compared to the other competing offerors, but upon whether the firm's proposal included "outstanding" features.

Similarly, JCS contends, for example, that its proposal should have received a blue/exceptional rating under the management factor because of numerous strengths identified by the evaluators. Like IT's evaluation in the Water Quality area, however, the agency did not identify any "outstanding" features of the JSC management proposal, finding that the proposal demonstrated "significant understanding" by [DELETE] and showed "merit" in other management areas. Like IT, JSC was deemed to have offered "the best" understanding in the management area but, as already discussed, this conclusion--without a finding of outstanding features--did not warrant a blue/exceptional rating for this area.

We do find that, based on the evaluation scheme used, JSC's proposal should have been rated blue/exceptional under the Hazardous Materials/Solid Waste/Hazardous Waste area, since the evaluators found that the proposal demonstrated "outstanding knowledge" of certain aspects of the contract requirement. However, increasing JSC's rating in this area would not have affected the source selection decision, since this would give JSC only one blue/exceptional sub-element rating compared to Foster Wheeler's two blue/exceptional ratings and its lower evaluated cost. That is, Foster Wheeler's proposal would still be second in line for award even if this rating were corrected. (We discuss the evaluation of Foster Wheeler's proposal in more detail below.)

EVALUATION ALLEGEDLY IGNORED QUALITY DISTINCTIONS

IT and JSC both contend generally that the assignment of green/acceptable overall technical and management ratings to all four proposals (reflecting the conclusion that the proposals were essentially equal) was unreasonable because it ignored important differences among the offers and failed to give adequate credit for the particular relative strengths of each firm's offer.

While an agency's scores or adjectival ratings provide source selection officials some information for purposes of making an award decision, they generally represent no more than guides to intelligent decision-making. Porter/Novelli, B-258831, Feb. 21, 1995, 95-1 CPD ¶ 101. Source selection officials may give these ratings little or great weight, depending upon the other information available for assessing the relative merits of the proposals. It is for this reason that our Office reviews the entire record--not just the numerical, adjectival or color ratings--including narrative materials and materials prepared during the course of a protest, in determining the reasonableness of an evaluation and source selection decision. PCL/Am. Bridge, B-254511.2, Feb. 24, 1994, 94-1 CPD ¶ 142.

The record shows that the evaluators were aware of and considered the relative strengths of the four proposals and conveyed their views to the source selection authority (SSA) in narrative form, along with the color/adjectival ratings, even where the proposals received the same green/acceptable rating. For example, under the Air sub-element, the evaluators found numerous strengths in the IT proposal and assigned the firm a blue/exceptional rating in this area. Even though the firm was ultimately assigned an overall technical rating of only green/acceptable, these strengths were nonetheless conveyed in the narrative materials presented to the SSA. The evaluators noted, for example, that IT's proposal reflected "an outstanding understanding of pollution prevention relating to air," as well as "an outstanding knowledge of Vandenberg Air Force Base's permitted equipment, environmental history and agreements . . . with [the cognizant] Air Pollution Control District. . . ." The evaluators also provided the SSA with their views of the relative merits of the four offers, stating, for example, that "F[oster] W[heeler] and IT both offered more benefits in Air because of each company's extensive knowledge, histories and capabilities." We conclude that there is no basis for the protesters' assertion that the evaluation was performed in a manner that did not inform the SSA of the proposals' relative merits.

DISCUSSIONS

Both protesters contend that the agency engaged in inadequate or misleading discussions. JSC contends that the agency improperly failed to advise it that its [DELETE] were too high compared to the independent government estimate. However, an agency is not required to inform an offeror that its price is too high unless the government considers the price unreasonably high. State Management Servs., Inc.; Madison Servs., Inc., B-255528.6 et al., Jan. 18, 1995, 95-1 CPD ¶ 25. There is nothing in the record showing that the Air Force considered JSC's price unreasonably high. We note, moreover, that the agency actually did advise JSC generally that its proposed costs were higher than the government estimate; in response to this advice, JSC lowered its proposed cost [DELETE] in its BAFO.

IT contends that the Air Force misled it into believing that it should not make changes to its staffing allocations when submitting its BAFO. In this regard, IT states that during both written and oral discussions, the contracting officer emphasized that any changes to IT's staffing that were submitted with its BAFO could result in the agency's finding the firm's offer unacceptable, and that IT would not be afforded an opportunity to make corrections after the submission of its BAFO. IT took this cautionary statement as indicating that it should not make staffing revisions to its offer, even though (according to IT) it could have reduced its cost significantly by making such changes.

We find nothing misleading here. The Air Force was doing no more than providing IT a cautionary reminder that making technical changes in its BAFO could render

its proposal unacceptable, and that this was a risk because the firm would not be afforded a subsequent opportunity to clarify its changes. (The record shows that all firms were provided the same cautionary advice in the agency's request for BAFOs.) Such cautionary reminders are not improper and are often used by an agency in advising offerors to prepare their BAFOs in strict compliance with the requirements of the solicitation. Champion-Alliance, Inc., B-249504, Dec. 1, 1992, 92-2 CPD ¶ 386; see Federal Elec. Corp., B-232704, Jan. 9, 1989, 89-1 CPD ¶ 18. IT was free to take the risk identified by the agency, and make any changes in its BAFO that it thought would improve its competitive standing. The fact that it did not do so reflects the firm's business judgment, not improper action by the agency.

EVALUATION OF FOSTER WHEELER'S PROPOSAL

As noted, the agency found Foster Wheeler in line for award after Tetra Tech, followed by IT and JSC, respectively. As discussed above, IT's and JSC's proposals were properly evaluated. Thus, in order to be interested parties for purposes of challenging the award to Tetra Tech, the protesters must first demonstrate some impropriety in the evaluation of Foster Wheeler's proposal, since that firm, not IT or JSC, would be in line for award based on the evaluation results as they stand. Whittaker Servs. Corp., B-260951, July 26, 1995, 95-2 CPD ¶ 102.

Foster Wheeler's proposed staffing was [DELETE] man-years; the government estimate was [DELETE]; IT's was [DELETE]; and JSC's was [DELETE].² The protesters argue that nothing in the contemporaneous evaluation record establishes that the agency ever considered the potential impact, from either a technical risk or cost risk standpoint, of these allegedly low staffing estimates.

This contention is without merit. The agency evaluated the sufficiency of each firm's proposed staffing within the context of its technical and management evaluation in each of the substantive performance areas. To accomplish this review, the cost evaluators presented the technical/management evaluators with extracts showing each firm's proposed staffing and labor mix for each substantive area (but excluding cost data). Further, after reviewing the initial proposals, the technical/management evaluators prepared detailed discussion questions relating to the adequacy or excessive nature of each firm's proposed staffing and labor mix for each substantive area where they were not satisfied by the terms of the proposals as written. After obtaining the firms' responses to the discussion questions, the evaluators again reviewed the adequacy of each firm's staffing and were satisfied

²IT also contends that the agency erred in not providing the staffing estimate used to prepare the government estimate in the RFP. This contention constitutes a challenge to the terms of the RFP. As it was not raised prior to the deadline for submitting proposals, the matter is untimely. 4 C.F.R. § 21.2(a)(1) (1995). We therefore dismiss this aspect of IT's protest.

that their concerns had been addressed. While the record does not include specific findings as to the adequacy of the offerors' proposed staffing, it is apparent that staffing was reviewed and considered acceptable for all four offerors. As the evaluators found Foster Wheeler's proposal--and correspondingly its staffing--at least acceptable in each of the substantive areas, they assigned it a proposal risk rating of low. Since proposed staffing below the levels of a government estimate do not automatically mean that the proposed staffing is inadequate, see KCA Corp., B-255115, Feb. 9, 1994, 94-1 CPD ¶ 94, and since the protesters have not shown that Foster Wheeler's staffing is insufficient, we have no basis to question this rating.³

In a related allegation, IT contends that the agency improperly failed to make upward adjustments to Foster Wheeler's cost proposal, and should not have assigned a low cost risk rating, because of the alleged inadequacy of its proposed staffing.⁴ However, since the technical/management evaluators had considered the proposed staffing and found it acceptable for all offerors, the cost evaluators simply had no basis for raising Foster Wheeler's proposed cost or changing its cost risk rating.⁵

JSC contends that the agency's cost realism evaluation is also flawed because it failed to consider that Foster Wheeler did not include various non-labor costs in its proposal, such as the cost of fuel for numerous vehicles to be operated during performance, and the cost of performing lab analysis of waste product samples.

³There is no basis to conclude simply from the difference between the manning levels proposed by Foster Wheeler and the government estimate that it was offering inadequate staffing or that it should therefore have received a lower proposal risk rating. All of the competitive range offerors proposed staffing lower than the government's estimated [DELETE] man-years.

⁴IT contends as well that the Air Force failed to compare proposals on the basis of each firm's proposed "effective cost-per-man-year." The agency was not required to perform a cost-per-man-year comparison. See Porter/Novelli, supra (an agency need not verify each and every cost element of every proposal or employ any particular evaluation methodology in conducting its cost realism evaluation).

⁵We note that the agency submitted all of Foster Wheeler's direct and indirect cost rates (as well as cost rate information for its major subcontractors) to the Defense Contract Audit Agency (DCAA) for review. DCAA took no exception to any of the rates it reviewed in connection with the Foster Wheeler proposal.

As explained by the agency, JSC's allegation is based on an erroneous assumption regarding the way in which different offerors accounted for these non-labor costs. JSC included [DELETE] in its cost proposal, while the other three firms included these costs [DELETE]. The cost evaluators analyzed the offerors' costs both in terms of direct labor, and indirect costs, and found the proposals acceptable as submitted with only minor changes not relevant here.

Of particular significance for our purposes is the fact that Foster Wheeler's indirect costs were significantly higher than JSC's. For the operations and maintenance portion of the base year of the contract, for example, the record shows that Foster Wheeler's indirect rate was [DELETE] percent of direct labor; in contrast, JSC's indirect rate was only [DELETE] percent. The cost evaluators concluded that the higher rate being proposed by Foster Wheeler was attributable to the fact that it uses a different accounting method than JSC. Foster Wheeler included various non-labor costs in [DELETE] as compared to JSC, which allocated these non-labor costs to [DELETE]. JSC has offered no evidence that refutes the agency's explanation, and we find no basis to question the reasonableness of the agency's conclusion in this regard.

Based on our review, we find that the agency's evaluation of Foster Wheeler, from both a cost and technical standpoint, was reasonable and consistent with the terms of the RFP. We also find that the SSA reasonably considered Foster Wheeler next in line for award after Tetra Tech. In this connection, the SSA submitted an affidavit with the agency report in which he explains the relative ranking of the offerors.⁶ He explains that he would have chosen Foster Wheeler for award after Tetra Tech because Foster Wheeler submitted the best rated proposal among the remaining three competitive range offerors. In this regard, we note that Foster Wheeler's proposal received two blue/exceptional ratings; one protester had two blue/exceptional ratings and the other should have had one, and all offerors had low risk ratings. In addition, Foster Wheeler had the lowest evaluated cost among the remaining three firms. Based on our review, and given that the evaluation and relative ranking of the protester's proposal was proper, we have no basis to question the SSA's conclusion that Foster Wheeler was second in line for award.

⁶Both protesters contest the agency's conclusion that Foster Wheeler was next in line for award since this finding was not expressed by the SSA until after award, in connection with the protest. Our Office considers the entire record, including materials prepared in connection with the protest, in reviewing the propriety of an agency's conduct of a procurement. PCL/Am. Bridge, supra.

EVALUATION OF TETRA TECH's PROPOSAL

The protesters raise numerous allegations concerning the evaluation of Tetra Tech's proposal. We dismiss these allegations because Foster Wheeler, not one of the protesters, is next in line for award, and the protesters are therefore not interested parties eligible to protest Tetra Tech's evaluation. 4 C.F.R. § 21.0(a).⁷

The protests are denied in part and dismissed in part.

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⁷IT also argues that the agency improperly assigned a "moderate" risk rating to its cost proposal because it essentially misread the firm's offer. IT concludes that, absent this and the other alleged errors, it would have been in line for award. As discussed, we find nothing improper in IT's technical/management rating. Thus, even if IT's proposal were given a low cost risk rating, it still would not be in line for award, since Foster Wheeler's technical/management and risk ratings would be identical to IT's, and its cost was lower. Foster Wheeler, not IT, thus would be in line for award even if IT's cost risk rating were raised. Whittaker Servs. Corp., supra.